

The Commonwealth of Massachusetts
OFFICE OF THE
DISTRICT ATTORNEY
BRISTOL DISTRICT

C. SAMUEL SUTTER
DISTRICT ATTORNEY

May 29, 2012

888 Purchase Street
P.O. Box 973
New Bedford, MA 02740
(508) 997-0711

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street
Boston, MA 02108-4619

Attn: Linda Han, MD, MPH, Director
Bureau of Laboratory Sciences

Re: *Commonwealth v. [REDACTED]*

Dear Dr. Han:

Enclosed herewith is a self-explanatory letter, with enclosures, from Attorney Mulvaney regarding Annie Dookhan, a/k/a Annie Kahn. I have written to him today indicating that our file does not contain any of the information he requests in the fifth paragraph of his letter, namely, "all exculpatory materials bearing upon the Commonwealth's expert witness, Annie Dookhan, her handling of the Commonwealth's physical evidence offered at trial, and the DPH investigation mentioned in the Han letter."

Please advise whether your office has any such information.

Thank you in advance for your earliest attention to this matter.

Sincerely,

William Connolly

Assistant District Attorney

Han, Linda (DPH)

From: Connolly, William (BRI)
Sent: Wednesday, May 30, 2012 9:30 AM
To: Han, Linda (DPH)
Subject: FW: Regarding the DPH chemist breach

Attachments: Sample Commonwealth Opposition to Subpoena.doc; Sample DPH Motion to Quash.docx; Sample Protective Order.doc; May 29 ltr to dph.docx

Dear Dr. Han: Yesterday, I mailed a letter to you (with enclosures) regarding a request we received from a defense attorney (see May 29th letter attached). Please disregard that letter because today I received the message below and the attached information from the Attorney General's Office.

ADA Bill Connolly

From: Nardone, Andrea (DAA)
Sent: Wednesday, May 30, 2012 9:19 AM
To: Connolly, William (BRI)
Subject: FW: Regarding the DPH chemist breach

Hi Bill,

This is what I have on the chemist breach. I hope this helps.

Andrea

From: Monroe, Natalie (AGO)
Sent: Friday, April 27, 2012 3:42 PM
To: DAA-DL-APPLT CHIEFS
Subject: Requests for DPH personnel and disciplinary documents

As many of you know, there was a breach of the recording protocols at the Department of Public Health's (DPH) drug lab on June 14, 2011. (A brief summary of the incident is at the end of this e-mail.) As many also know, defense attorneys have been seeking documents about the incident, including the former chemist's personnel files and the investigation/disciplinary reports. We've been working with DPH to oppose production of these documents, which are privileged and confidential (and irrelevant). Because it appears that some DAOs are being hit with motions for DPH documents, I thought it might be helpful to circulate samples oppositions, along with a motion for a protective order.

Also, I note that DPH's personnel and disciplinary records do not fall within the automatic disclosure requirements of Mass. R. Crim. P. 14. See, e.g., Com. v. Wanis, 426 Mass. 639 (1998). Instead, defense counsel must file a Rule 17 motion for the documents. Id. Some courts and defense counsel forget about this and therefore order DAOs to turn over the materials.

The documents are as follows:

1. Commonwealth Opposition to Subpoena: This is a sample from Plymouth County (thank you!). While it's styled as a motion to reconsider, it could easily be turned into an opposition to a Rule 17 motion.
2. DPH Motion to Quash: This is a sample of what we've filed on behalf of DPH.
3. Protective Order: Can be used if the documents are ordered to be produced. We also have a similar version that we file on behalf of DPH.

FALLON, SULLIVAN AND MULVANEY

Counselors At Law

115 State Street

Springfield, Massachusetts 01103

Tel (413) 732-0346

Fax # (413) 736-8610

William E. Fallon
Kevin J. Sullivan*
Edward P. Mulvaney

166 Elm Street
Westfield, MA 01085
(413) 562-3707

*Also Admitted to the New York Bar

April 11, 2012

District Attorney's Office Bristol County
Attn: A.D.A. David Mark, Chief, Appeals Unit
888 Purchase Street,
New Bedford, MA 02740

Re: *Commonwealth v. [REDACTED]*

Dear Attorney Mark:

Please accept this letter with regard to the above-referenced matter which is presently on appeal. I have been assigned to represent this defendant by the Committee For Public Counsel Services. Unfortunately, I am writing to inform you that exculpatory evidence bearing an important prosecution witness was not disclosed to the defense prior to trial. See, *Commonwealth v. Murray*, 461 Mass. 10, 23 n. 10 (2011).

In particular, this matter was a trafficking prosecution tried during January of 2012, before Associate Justice Moses of the Superior Court. Attorney James Powderly appeared for the defendant. A.D.A. Gregory Tinsworth prosecuted for the Commonwealth. Although I do not have a transcript of the trial, I have spoken to Attorney Powderly about the case. Annie Dookhan was the chemist at the William A. Hinton laboratory who handled the Commonwealth's physical evidence. See the enclosed certificate of analysis. It is my understanding from Attorney Powderly that during its case-in-chief the Commonwealth called Annie Dookhan as a witness. Apparently, Ms. Dookhan was the "lead analyst" from the state laboratory regarding the physical evidence of the Commonwealth. Not surprisingly, this expert witness testified about the chain of custody, the nature of the substance analyzed and the weight of the evidence. I am told that the witness appeared to represent herself as employed by the state as an analytical chemist. Apparently, the defense had no information to effectively challenge either her qualifications as an expert or the weight of her testimony. See, *Campbell v. Cape & Islands Healthcare Services, Inc.*, 81 Mass. App. Ct. 252, 259-260 (2012).

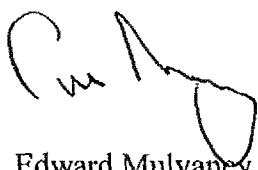
After the defendant was convicted a notice of appeal was filed and I was assigned by CPCS to handle the matter. In the course of investigating the appeal, I routinely spoke to Attorney Powderly about the prosecution's case and the trial. Thereafter, I received information from CPCS that Annie Dookhan has been relieved of all professional duties involving laboratory analysis. See the enclosed correspondence from the Norfolk District Attorney's office to CPCS dated February 2, 2012. Apparently Ms. Dookhan's relief was due to a breach of procedure and/or protocol at the William A. Hinton State Laboratory Institute during June of 2011. See the enclosed letters from Linda Han Director Bureau of Laboratory Sciences to Michael W. Morrissey, Norfolk District Attorney. *It is my understanding that another state chemist, Kate Corbett, appeared recently at a hearing in a District Court criminal matter before Justice Orfanello and testified that Ms. Dookhan was no longer employed by the state laboratory and had been "fired."*

I have enclosed a letter by A.D.A. Erin McFarland, Norfolk County, which states that Ms. Dookhan is the unnamed chemist referenced in the enclosed letter authored by Linda Han. The initial letter by Dr. Han to the Norfolk District Attorney's office was followed by a more detailed letter on February 21, 2012. Dr. Han's detailed letter disclosed that on June 16, 2011, laboratory personnel were alerted to a breach of protocol regarding some ninety drug samples. The Han letter explains that the chemist failed to record the transfer of evidence from the evidence office in that office's log book. This was confirmed on June 20, 2011, by two supervisors. More troubling, Dr. Han's letter reveals that "on June 21st, when the log book was reexamined, entries did appear showing a transfer of the samples from the evidence office to the chemist." "**It appeared that these entries were made by the chemist after June 14th.**" Consequently, "the chemist was removed from all responsibilities involving laboratory analysis as of June 21, 2011." See the enclosed letter of Dr. Han, emphasis supplied.

Unfortunately, none of this information was provided to the defendant's trial counsel or disclosed at trial. Trial counsel was merely provided with the enclosed copy of Annie Dookhan's curriculum vitae which recited that she was presently employed by the Department of Public Health as a Chemist II. Consequently, I am obliged to request that your office now kindly provide me with all exculpatory materials bearing upon the Commonwealth's expert witness, Annie Dookhan, her handling of the Commonwealth's physical evidence offered at trial, and the DPH investigation mentioned in the Han letter. I should alert you to the fact that Ms. Dookhan is also professionally known as "Annie Khan." See, *Commonwealth v. Charlton*, 81 Mass. App. Ct. 294, 304 (2012). I believe that this request is reasonable and proper, given your office's ongoing duty to disclose exculpatory evidence. Certainly, the request is also made pursuant to Rule 14, *Brady v. Maryland*, 373 U.S. 83 (1963), *Commonwealth v. Murray*, 461 Mass. 10, 19-23 (2011), *Commonwealth v. Daniels*, 445 Mass. 392, 409-410 (2005), and *Imbler v. Pachtman*, 424 U.S. 409 (1976) (post-conviction disclosure of exculpatory evidence). Accordingly, I am requesting that your office disclose all exculpatory materials involving Ms. Dookhan/Khan and the prosecution's physical evidence offered at trial.

In closing, I should emphasize that this letter is not an allegation of misconduct by either the Commonwealth's trial counsel or your office. I have no information that the trial prosecutor was aware of the facts set forth above. Compare, *Commonwealth v. Murray* at n. 10. Neither do I have any information that your office does not routinely disclose *Brady* materials in a timely manner. Also, the enclosed letter by Doctor Han was only recently sent to the *Norfolk District Attorney's Office* and so implies that your office has not been informed about this situation. In any case, I want to thank you for your attention and hope to work with your office to clarify this matter.

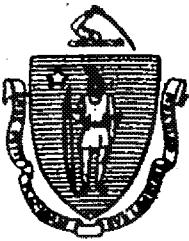
Yours truly,



Edward Mulvaney

Enclosures: Correspondence Dr. Han/Norfolk District Attorney's Office

Cc: Attorney James Powderly



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health

William A. Hinton State Laboratory Institute
305 South Street, Jamaica Plain, MA 02130

DATE RECEIVED: 07/23/2010
DATE ANALYZED: 08/20/2010

NO. [REDACTED]

I hereby certify that the substance
Contained in 2 plastic bags
Submitted by Detective N. PACHECO of the Fall River Police Dept. [REDACTED] MARKED:

Has been examined with the following results:

The substance was found to contain:

Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C, Controlled Substance Act, Section 31, Class B.

NET WEIGHT: 342.50 grams

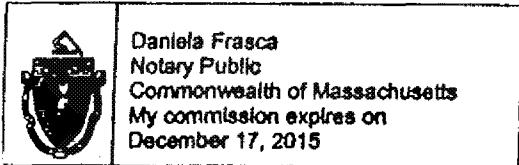
DEFENDANT: [REDACTED]

ASSISTANT ANALYST

Annie Dookhan

Daniel Renczkowski

On this 24th day of August 2010, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



Daniela Frasca, NOTARY PUBLIC
My commission expires on December 17, 2015

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, mediciné, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.



The Commonwealth of Massachusetts

Office of the District Attorney FOR THE NORFOLK DISTRICT

Michael W. Morrissey
District Attorney

1515 Hancock Street
Quincy, MA 02169
617-769-6100
Fax: 617-769-6101

February 2, 2012

Attorney Robert Tutino
Committee for Public Counsel Services
450 Washington St., Suite 206
Dedham, MA 02026
Fax #: 781-320-0011
Via Facsimile only

Re: Commonwealth v. [REDACTED] Quincy District Court Docket Number [REDACTED]

Dear Attorney Tutino,

Enclosed please find a letter my office received from the Department of Public Health regarding a possible breach of protocol with respect to some drug samples. While not named in the DPH letter, the chemist being investigated is Annic Dookhan, the chemist who analyzed the substances in our case. It is the understanding of this office that the chemist may have directly taken evidence from the evidence locker for testing without properly signing for the same and/or obtaining the co-signature of the evidence officer.

The substances involved in our case are not among the ninety samples mentioned in the DPH letter. I have not been provided any indication that the testing in our case was compromised in any way. I share with you the letter out of an abundance of caution to notify you of the DPH investigation.

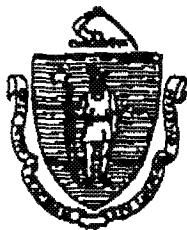
In respect to our case, I anticipate going forward by calling DPH chemist Kate Corbett. You have previously been provided with her CV as part of the drug discovery information.

If I receive any further information about this matter I will forward it to you immediately. If you have any questions, please contact me at (617) 479-7454.

Very truly yours,

E. M. McFarland
Erin M. McFarland
Assistant District Attorney

Enclosure



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

DEVAL L. PATRICK
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TIMOTHY P. MURRAY
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SECRETARY

JOHN AUERBACH
COMMISSIONER

February 1, 2012

Michael W. Morrissey, Norfolk District Attorney
Norfolk District Attorney's Office
45 Shawmut Road
Canton, MA, 02021

Dear District Attorney Morrissey,

I am writing to inform you that we are currently investigating a possible breach of protocol with respect to ninety drug samples tested at the William A. Hinton State Laboratory Institute. These ninety samples were received exclusively from Norfolk County and assigned for analysis on the same day. Attached is a list of the control numbers for the samples identified in the investigation.

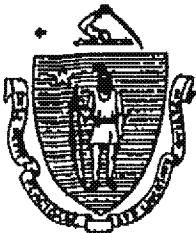
At this time, there is no evidence that this had an impact on the integrity of the samples or the accuracy of the sample analysis. Please be assured that measures were immediately taken to ensure proper compliance with protocol procedures.

Additional information will be provided upon completion of the investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Han".

Linda Han, MD, MPH, Director
Bureau of Laboratory Sciences



**The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619**

**DEVAL L. PATRICK
GOVERNOR**

**TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR**

**JUDYANN BIGBY, MD
SECRETARY**

**JOHN AUERBACH
COMMISSIONER**

February 21, 2012

**Michael W. Morrissey, Norfolk District Attorney
Norfolk District Attorney's Office
45 Shawmut Road
Canton, MA 02021**

Dear District Attorney Morrissey,

As I indicated in my letter to you dated February 1, 2012, I am providing additional information based on the investigation concerning a breach of protocol at the William A. Hinton State Laboratory Institute ("the Lab"). Further detail is provided below:

The Lab's protocols for handling evidence samples require that all samples received for testing be given a unique sample identifier called an evidence control number. The Lab uses the control number to track the samples as they undergo the testing process. The control numbers are initially entered into a computer tracking system and log book when first received by the Lab, and a card (control card) containing the control number is attached to the sample. When the samples are transferred out of the evidence office for testing, they are manually recorded in the office log book (log book) and computer tracking system. An evidence officer is required to record his/her initials, the date of the transfer and the initials of the chemist accepting receipt of the sample(s) in the log book. The chemist receiving the sample is required in the presence of the evidence officer to record his/her initials signifying his/her receipt. The chemist also initials the control card after completing the testing process.

These protocols have been consistently followed with regard to the drug samples, ensuring that the integrity of the samples is protected and providing drug analytical results that are expertly prepared and accurate.

Because of the mechanisms in place to identify problems, Laboratory personnel quickly became aware of a potential breach in its recording protocols on June 16, 2011 when an evidence officer noted that the information displayed on the computer for a case did not show the sample(s) for that case as having been assigned to the chemist identified on the control card. This process was repeated for other samples in the same batch with the same results. Further investigation revealed no entries in the log book recording a transfer of these samples from the evidence office to the chemist for testing on June 14, 2011.

The evidence officer immediately contacted her supervisor to alert her of the irregularity. The supervisor, in turn, on June 20th brought this to the attention of her supervisor, the Laboratory's Director of the Division of Analytic Chemistry and, in addition, to my attention and the attention of the Supervising Chemist for the Analysis Section. On the same day, June 20th, they all examined the log book and confirmed that there had been no recording of a transfer of these samples from the evidence office to the chemist for testing on June 14th. On June 21st, when the log book was reexamined, entries did appear showing a transfer of the samples from the evidence office to the chemist. It appeared that these entries were made by the chemist after June 14th.

The chemist involved in this case has been employed by the Department for eight years. Prior to this incident, she had no personnel issues and was well respected for the accuracy of her work and her dedication to the Laboratory's mission. In review of the incident, the managers at the Laboratory did not believe there was any reason to believe that the integrity of the samples had been affected by the breach in protocol or the late entries in the log book. However, the chemist was removed from all responsibilities involving laboratory analysis as of June 21, 2011.

The Commissioner's office first became aware of this incident on December 1. The Laboratory managers had not reported this incident to the DPH Central Office because they did not appreciate its potential legal significance and because of their opinion that the integrity of the test results had not been affected. The Central Office conducted its own investigation of the incident and confirmed that there was no evidence to suggest that the integrity of the results was impacted.

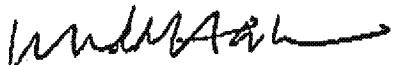
- by the documentation issue with the log book. The Department's Human Resources Division is reviewing what appropriate disciplinary actions should be taken.

Within the single batch that shared this documentation breach, there were a total of 90 evidence samples, all of which were from Norfolk County.

The Department has taken a number of steps to minimize any reoccurrence of this nature. The Laboratory revised and strengthened its protocols for handling test samples. The new protocols include more secure, redundant mechanisms for tracking and transferring samples, and limit direct access to the samples to the evidence officers.

Please let me know if you have any questions concerning this additional information.

Sincerely,



Linda Han, MD, MPH, Director
Bureau of Laboratory Sciences

Curriculum Vitae

Annie Khan (Dookhan)

Education:

University of Massachusetts, Boston, Ma, Master of Science in Chemistry.
University of Massachusetts, Boston, Ma, Bachelor of Science in Biochemistry.

Experience:

2003 – present

Chemist I, II, Massachusetts Department of Public Health, Drug Analysis Laboratory

- *Completed six-week training course conducted by senior staff within the Department of Public Health, Drug Analysis Laboratory.
- *Appointed Assistant Analyst by Assistant Commissioner of Public Health, 2004.
- *Responsible for the identification of illicit drugs to determine violations of harmful and narcotic drug laws.
- *Trained in the use of complex analytical instrumentation, microscopes and balances for the purpose of drug analysis.
- *Maintenance and repairs of all analytical instruments.
- *Responsible for the Quality Control of all analytical instruments, reagents and controls/standards.
- * Responsible for the Quality Control/Quality Assurance program for the drug lab.
- *Notary Public.
- *Qualified as an expert witness in Massachusetts Courts and U.S. District Court

2001 – 2003

QC Analyst I, II, UMMS-Massachusetts Biologic Laboratory, QC Material Control

- *Completed proficiency training conducted by a member of the staff within the MLB Quality Control and Quality Assurance Department.
- *Method Development for creating new techniques and enhancing vaccines for the QC Dept. and FDA.
- *Writing, revising and reviewing Standard Operating Procedures (SOPs).
- *Trained and supervised new chemists and interns for the department.
- *Routine QC testing of products for the FDA.
- *Trained in the use of complex analytical instrumentation, and balances for the purpose of QC analysis for product and validation projects.
- *Calibration, preventive maintenance, QC and QA of analytical instrumentation.
- *Complete testing of chemicals for Vendor Validation Project for the FDA.
- *Compendial testing and interpretation of the USP, ACS, FCC, AOAC, Merck Index, PDR, etc.

Additional Training:

Dept. of Justice – Forensics Professionals. (numerous trainings)
GLP/GMP course with Massachusetts Biologic Laboratory.
QC/QA training according to FDA Codes and Regulations.
GC and GC/MS courses with Agilent Technologies and Restek.
HPLC course with Waters Cooperation.
FTIR course with Spectros.
TOC training with MBL and Sievers.

Association:

American Chemical Society (ACS)
Northeastern Association of Forensics Science (NEAFS)